

AMENDED IN SENATE AUGUST 21, 2013

AMENDED IN SENATE JULY 9, 2013

AMENDED IN SENATE JUNE 26, 2013

AMENDED IN SENATE JUNE 19, 2013

AMENDED IN ASSEMBLY MAY 29, 2013

AMENDED IN ASSEMBLY APRIL 29, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1359

**Introduced by Assembly Member Roger Hernández
(Coauthor: Assembly Member Ammiano)**

February 22, 2013

An act to amend Section 66477 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 1359, as amended, Roger Hernández. Quimby Act: use of fees.

The Quimby Act, which is within the Subdivision Map Act, authorizes the legislative body of a city or county to require the dedication of land or impose fees for park or recreational purposes as a condition to the approval of a tentative or parcel subdivision map, if specified requirements are met. One of these requirements is that the dedicated land or fees, or combination thereof, shall be used only for the purposes of developing or rehabilitating neighborhood or community park or recreational facilities to serve the subdivision for which the land was dedicated or fees were paid. The act provides that the dedication of land, or the payment of fees, or both, shall not exceed the proportionate

amount necessary to provide 3 acres of park area per 1,000 persons residing within a subdivision subject to the act, except as specified. Existing law requires fees to be payable at the time of the recording of the final map or parcel map or at a later time as may be prescribed by local ordinance.

This bill would authorize fees paid pursuant to the act to also be used for the purpose of developing or rehabilitating park or recreational facilities in a neighborhood other than the neighborhood in which the subdivision for which fees were paid as a condition to the approval of a tentative map or parcel map is located, if certain requirements are met. The bill would require the legislative body to hold a public hearing before using fees as prescribed in the bill. This bill also would authorize the use of joint or shared use agreements to facilitate access to park or recreational facilities for residents in specified areas.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 66477 of the Government Code, as
2 amended by Section 61 of Chapter 181 of the Statutes of 2012, is
3 amended to read:

4 66477. (a) The legislative body of a city or county may, by
5 ordinance, require the dedication of land or impose a requirement
6 of the payment of fees in lieu thereof, or a combination of both,
7 for park or recreational purposes as a condition to the approval of
8 a tentative map or parcel map, if all of the following requirements
9 are met:

10 (1) The ordinance has been in effect for a period of 30 days
11 prior to the filing of the tentative map of the subdivision or parcel
12 map.

13 (2) The ordinance includes definite standards for determining
14 the proportion of a subdivision to be dedicated and the amount of
15 any fee to be paid in lieu thereof. The amount of land dedicated
16 or fees paid shall be based upon the residential density, which shall
17 be determined on the basis of the approved or conditionally
18 approved tentative map or parcel map and the average number of
19 persons per household. There shall be a rebuttable presumption
20 that the average number of persons per household by units in a
21 structure is the same as that disclosed by the most recent available

1 federal census or a census taken pursuant to Chapter 17
2 (commencing with Section 40200) of Part 2 of Division 3 of Title
3 4. However, the dedication of land, or the payment of fees, or both,
4 shall not exceed the proportionate amount necessary to provide
5 three acres of park area per 1,000 persons residing within a
6 subdivision subject to this section, unless the amount of existing
7 neighborhood and community park area, as calculated pursuant to
8 this subdivision, exceeds that limit, in which case the legislative
9 body may adopt the calculated amount as a higher standard not to
10 exceed five acres per 1,000 persons residing within a subdivision
11 subject to this section.

12 (A) The park area per 1,000 members of the population of the
13 city, county, or local public agency shall be derived from the ratio
14 that the amount of neighborhood and community park acreage
15 bears to the total population of the city, county, or local public
16 agency as shown in the most recent available federal census. The
17 amount of neighborhood and community park acreage shall be the
18 actual acreage of existing neighborhood and community parks of
19 the city, county, or local public agency as shown on its records,
20 plans, recreational element, maps, or reports as of the date of the
21 most recent available federal census.

22 (B) For cities incorporated after the date of the most recent
23 available federal census, the park area per 1,000 members of the
24 population of the city shall be derived from the ratio that the
25 amount of neighborhood and community park acreage shown on
26 the maps, records, or reports of the county in which the newly
27 incorporated city is located bears to the total population of the new
28 city as determined pursuant to Section 11005 of the Revenue and
29 Taxation Code. In making any subsequent calculations pursuant
30 to this section, the county in which the newly incorporated city is
31 located shall not include the figures pertaining to the new city
32 which were calculated pursuant to this paragraph. Fees shall be
33 payable at the time of the recording of the final map or parcel map,
34 or at a later time as may be prescribed by local ordinance.

35 (3) (A) The land, fees, or combination thereof are to be used
36 only for the purpose of developing new or rehabilitating existing
37 neighborhood or community park or recreational facilities to serve
38 the subdivision, except as provided in subparagraph (B).

39 (B) Notwithstanding subparagraph (A), fees may be used for
40 the purpose of developing new or rehabilitating existing park or

1 recreational facilities in a neighborhood other than the
2 neighborhood in which the subdivision for which fees were paid
3 as a condition to the approval of a tentative map or parcel map is
4 located, if all of the following requirements are met:

5 (i) The neighborhood in which the fees are to be expended has
6 fewer than three acres of park area per 1,000 members of the
7 neighborhood population.

8 (ii) The neighborhood in which the subdivision for which the
9 fees were paid has a park area per 1,000 members of the
10 neighborhood population ratio that meets or exceeds the ratio
11 calculated pursuant to subparagraph (A) of paragraph (2), but in
12 no event is less than three acres per 1,000 persons.

13 (iii) The legislative body holds a public hearing before using
14 the fees pursuant to this subparagraph.

15 (iv) The legislative body makes a finding supported by
16 substantial evidence that it is reasonably foreseeable that future
17 inhabitants of the subdivision for which the fee is imposed will
18 use the proposed park and recreational facilities in the
19 neighborhood where the fees are used.

20 (v) The fees are used within a specified radius that complies
21 with the city's or county's ordinance adopted pursuant to
22 subdivision (a), and are consistent with the adopted general plan
23 or specific plan of the city or county. *For purposes of this clause,*
24 *"specified radius" includes a planning area, zone of influence, or*
25 *other geographic region designated by the city or county, that*
26 *otherwise meets the requirements of this section.*

27 (4) The legislative body has adopted a general plan or specific
28 plan containing policies and standards for parks and recreational
29 facilities, and the park and recreational facilities are in accordance
30 with definite principles and standards.

31 (5) The amount and location of land to be dedicated or the fees
32 to be paid shall bear a reasonable relationship to the use of the
33 park and recreational facilities by the future inhabitants of the
34 subdivision.

35 (6) (A) The city, county, or other local public agency to which
36 the land or fees are conveyed or paid shall develop a schedule
37 specifying how, when, and where it will use the land or fees, or
38 both, to develop park or recreational facilities to serve the residents
39 of the subdivision. Any fees collected under the ordinance shall
40 be committed within five years after the payment of the fees or

1 the issuance of building permits on one-half of the lots created by
2 the subdivision, whichever occurs later. If the fees are not
3 committed, they, without any deductions, shall be distributed and
4 paid to the then record owners of the subdivision in the same
5 proportion that the size of their lot bears to the total area of all lots
6 within the subdivision.

7 (B) The city, county, or other local agency to which the land or
8 fees are conveyed or paid may enter into a joint or shared use
9 agreement with one or more other public districts in the
10 jurisdiction, including, but not limited to, a school district or
11 community college district, in order to provide access to park or
12 recreational facilities to residents of subdivisions with fewer than
13 three acres of park area per 1,000 members of the population.

14 (7) Only the payment of fees may be required in subdivisions
15 containing 50 parcels or less, except that when a condominium
16 project, stock cooperative, or community apartment project, as
17 those terms are defined in Sections 4105, 4125, and 4190 of the
18 Civil Code, exceeds 50 dwelling units, dedication of land may be
19 required notwithstanding that the number of parcels may be less
20 than 50.

21 (8) Subdivisions containing less than five parcels and not used
22 for residential purposes shall be exempted from the requirements
23 of this section. However, in that event, a condition may be placed
24 on the approval of a parcel map that if a building permit is
25 requested for construction of a residential structure or structures
26 on one or more of the parcels within four years, the fee may be
27 required to be paid by the owner of each parcel as a condition of
28 the issuance of the permit.

29 (9) If the subdivider provides park and recreational
30 improvements to the dedicated land, the value of the improvements
31 together with any equipment located thereon shall be a credit
32 against the payment of fees or dedication of land required by the
33 ordinance.

34 (b) Land or fees required under this section shall be conveyed
35 or paid directly to the local public agency which provides park
36 and recreational services on a communitywide level and to the
37 area within which the proposed development will be located, if
38 that agency elects to accept the land or fee. The local agency
39 accepting the land or funds shall develop the land or use the funds
40 in the manner provided in this section.

1 (c) If park and recreational services and facilities are provided
2 by a public agency other than a city or county, the amount and
3 location of land to be dedicated or fees to be paid shall, subject to
4 paragraph (2) of subdivision (a), be jointly determined by the city
5 or county having jurisdiction and that other public agency.

6 (d) This section does not apply to commercial or industrial
7 subdivisions or to condominium projects or stock cooperatives
8 that consist of the subdivision of airspace in an existing apartment
9 building that is more than five years old when no new dwelling
10 units are added.

11 (e) Common interest developments, as defined in Section 1351
12 of the Civil Code, shall be eligible to receive a credit, as determined
13 by the legislative body, against the amount of land required to be
14 dedicated, or the amount of the fee imposed, pursuant to this
15 section, for the value of private open space within the development
16 which is usable for active recreational uses.

17 (f) Park and recreation purposes shall include land and facilities
18 for the activity of “recreational community gardening,” which
19 activity consists of the cultivation by persons other than, or in
20 addition to, the owner of the land, of plant material not for sale.

21 (g) This section shall be known, and may be cited, as the
22 Quimby Act.